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No. 07-1167

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IN THE
Supreme Court of the United States

VIRGINIA MEISTER,
Petitioner,

v.

STATE OF INDIANA and CITY OF UNION CITY,
Respondents.

On Petition for Writ of Certiorari to the Indiana Court of Appeals

BRIEF IN RESPONSE TO THE PETITION

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QUESTION PRESENTED

Whether the Fourth Amendment requires a police officer to demonstrate a threat to his safety or a need to preserve evidence related to the crime of arrest in order to justify a warrantless search of a vehicle incident to arrest conducted after the vehicle's recently arrested occupant has been secured.

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STATEMENT

At the time of the incidents giving rise to this case, John "Billy" Wymer had a reputation as one of the main suppliers of methamphetamine in Union City, Indiana. Pet. App. 16. That reputation, and Wymer's illegal drug-related activities, led to the civil forfeiture of his mother's truck, which Wymer was caught using to transport methamphetamine. Pet. App. 15-16. The issue here is whether the search of the truck, which police carried out without a warrant incident to Wymer's arrest for driving with a suspended license, was lawful under the Fourth Amendment.

1. On October 22, 2003, Union City police officer William Bradbury was on patrol when he observed Wymer driving a truck southbound on North Columbia Street, Union City. Pet. App. 14, 41. Officer Bradbury recognized both Wymer, whom he had arrested twice already in 2003, and the truck, which Wymer had been driving at both of those prior arrests. Pet. App. 14; Trial Transcript 13-21.

Officer Bradbury had heard that the BMV had suspended Wymer's driver's license due to prior arrests and convictions, so he was surprised to see Wymer driving. Pet. App. 14-15, 41-42. Officer Bradbury pulled his police cruiser into the street behind Wymer, activated the cruiser's video camera, and radioed his dispatcher to run a license check on Wymer. Pet. App. 15. After a few blocks, Wymer pulled into a convenience-store parking lot. Pet. App. 15. Officer Bradbury pulled into an adjacent lot and parked so his vehicle was facing Wymer's. Pet. App. 15. Wymer eventually exited the store,

approached the police cruiser, and asked whether Bradbury knew something he did not. Pet. App. 15. Bradbury said no, and Wymer returned to the truck and sat inside for several minutes. Pet. App. 15. Within a few minutes, the dispatcher informed Bradbury that Wymer's license indeed was suspended based on a prior conviction. Pet. App. 15.

With that information, Officer Bradbury pulled his cruiser up near Wymer's truck, exited his vehicle, and approached the driver's side of the truck. Pet. App. 15. Wymer stepped out of the truck, and Officer Bradbury informed him that his license had been suspended. Pet. App. 15. Officer Bradbury proceeded to arrest Wymer, place him in handcuffs, and search him. Pet. App. 15. In searching Wymer, Officer Bradbury found a hollowed-out ink pen that had a powdery residue inside. Pet. App. 15-16. After the search, he placed Wymer in the back of the police car. Trial Transcript 13.

Officer Bradbury then searched the truck. Pet. App. 16. He and Union City, Ohio, Officer Dave McHenry, who had joined Bradbury at the scene after Bradbury radioed for backup, found an empty pill bottle under the driver's seat with powdery residue inside having a strong chemical odor. Pet. App. 16. A preliminary field test was positive for methamphetamine. Pet. App. 16.

2. Under Indiana law, owners of personal and real property forfeit their ownership rights when they knowingly allow their property to be used for illegal drug-related activities. *See* Ind. Code § 34-24-1-4(a). On February 23, 2004, the State of Indiana,

by the City of Union City, filed a complaint for forfeiture against John Wymer and Virginia Meister for the truck in which Officer Bradbury found methamphetamine incident to Wymer's arrest in October 2003. Pet. App. 4, 17.

Meister is Wymer's mother and was the owner of the truck in October 2003. Pet. App. 4, 33; Trial Transcript 45. Substantial evidence, including evidence that Meister and Wymer at various times lived together or in adjacent homes and that Meister knew of Wymer's multiple arrests for drug-related activities—and, in fact, bonded him out of jail at least once following a drug-related arrest—supported the government's theory that Meister knowingly allowed the truck to be used for transporting illegal narcotics. Pet. App. 33.

The forfeiture claim went to a bench trial on June 10, 2005. Pet. App. 17. Meister objected to the search of her truck incident to Wymer's arrest for driving with a suspended license, arguing that the arrest alone did not justify a warrantless search without some further showing that Officer Bradbury had reason to fear for his safety. Pet. App. 5. The trial court overruled the objection, admitted the evidence, and ultimately entered judgment on behalf of the State, ordering Meister's truck forfeited, on March 14, 2006. Pet. App. 3-12.

3. On appeal, Meister argued that evidence of the methamphetamine Officer Bradbury found in the truck should have been excluded because Bradbury's search violated the Fourth Amendment's warrant requirement. Pet. App. 50-55. As in the trial court, Meister argued that the crime of arrest—driving

with a suspended license—did not supply any justification for searching the truck. Pet. App. 50-55. She also argued that, because Wymer was arrested and in handcuffs, Bradbury and other officers on the scene had no self-protection justification for searching the truck without a warrant. Pet. App. 52-53. Under the particular circumstances of the case, she argued, police had time to get a warrant before searching the truck, so their decision to forego a warrant was unlawful. Pet. App. 52-54.

The Indiana Court of Appeals rejected this argument, concluding that the Court's decision in *Thornton v. United States*, 541 U.S. 615, 622 (2004), provided a bright-line justification for Officer Bradbury's search. Pet. App. 21-22. Where a search of a vehicle is incident to an arrest of the occupant, the search is *per se* reasonable even without a warrant. *See United States v. Belton*, 453 U.S. 454, 460-61 (1981). Fourth Amendment doctrine does not require close examination of the precise circumstances of each arrest to determine whether a warrantless search of a vehicle incident to arrest of the occupant is reasonable. *See id.* In all such cases, the general concerns for preserving evidence and for police safety apply. *See id.*

Meister asked the Indiana Supreme Court for discretionary review, but the Court denied the petition. App. 37.

DISCUSSION

In her Petition, Virginia Meister carries forward the same Fourth Amendment arguments she made unsuccessfully in the Indiana trial court, the Indiana Court of Appeals, and the Indiana Supreme Court—that an arrest of a vehicle's occupant does not itself justify a warrantless search of the vehicle without a further showing of the need to preserve evidence related to the arrest or the need to protect the safety of police officers. Pet. 10-20. This is precisely the same issue the Court has agreed to address in *Arizona v. Gant*, 07-542 (cert. granted Feb. 25, 2008). Accordingly, the Petition in this case should be held pending the Court's decision in *Gant* and then disposed of appropriately in light of that decision.

CONCLUSION

The Petition should be held pending the decision in *Arizona v. Gant*, 07-542, and then disposed of accordingly.

Respectfully submitted,

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